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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

AKILI WALKER,

Defendant and Appellant.

B303442

(Los Angeles County  
Super. Ct. No. MA071648)

APPEAL from an order of the Superior Court of Los Angeles County, Shannon Knight, Judge. Affirmed.

Christopher Love, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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We review this appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436.

In 2018, a jury convicted appellant of assault with a firearm, making a criminal threat, possession of a firearm by a felon, and unlawful possession of ammunition. (Penal Code sections 245, subd. (a)(2); 422, subd. (a); 29800, subd. (a)(1); 30305, subd. (a)(1).) The jury also found appellant personally used a firearm in violation of Penal Code section 12022.5, subd. (a).

On May 18, 2018, the court sentenced appellant to 16 years four months in prison. The court imposed the low term of 16 months on the criminal threat count and added a consecutive 10-year term for the firearm enhancement. It also imposed a mandatory consecutive five-year term because appellant had a prior serious felony conviction. (Pen. Code, § 667, subd. (a)(1).) The sentences on the remaining counts were either stayed or ordered to run concurrently. The court also ordered appellant to pay various fines and fees.

Appellant appealed and this court affirmed the conviction. We remanded the sentence to the trial court, however, “with directions to exercise its discretion whether to resentencing appellant, pursuant to [Penal Code] sections 667, subdivision (a) and 1385, subdivision (b), as amended by Senate Bill No. 1393.” (*People v. Walker* (Aug. 20, 2019, B290243) [nonpub. opn.].) We did so because while the appeal was pending, the legislature passed Senate Bill No. 1393, giving the trial courts discretion to strike five-year terms for prior serious felony convictions. In this case, appellant’s prior serious felony, which had triggered the mandatory term, was 33-years-old.

On December 3, 2019, the trial court conducted a resentencing hearing. The court reviewed the transcripts from the prior May 18, 2018 sentencing as well as the probation report prepared for that hearing. At the hearing the trial court explained it had previously imposed the low term of 16 months on the criminal threats count because it “was required to impose that five-year serious felony prior.” The court then struck the five-year term for the serious felony allegation and resentenced appellant. It increased the sentence on the criminal threats conviction from the 16-month low term to the three-year upper term and reimposed the 10-year gun enhancement. The remaining sentences were left unchanged. The result was a total sentence of 13 years. Appellant also asked the court to strike the various fines and fees it had previously imposed, arguing he did not have the ability to pay under *People v. Dueñas* (2019) 30 Cal.App.5th 1157. The court declined to do so and reimposed the fines and fees, finding appellant did have the ability to pay.

Walker filed a timely notice of appeal.

We appointed counsel to represent Walker on appeal. After examining the record, counsel filed an opening brief raising no issues and asking this court to review the record independently as required by *People v. Wende*. On May 11, 2020, we advised Walker he had 30 days within which to personally submit any contentions or issues he wished us to consider. On June 9, 2020, Walker filed a supplemental brief raising two issues: 1) “the evidence was insufficient to support a conviction for a criminal threat”; and 2) “court appointed counsel was ineffective in failing to conduct a reasonable pre-trial investigation” in that “trial counsel failed to present and/or subpoena any of the witnesses, to

corroborate defendant's testimony or to contest the criminal threat allegation."

We have examined the entire record and are satisfied Walker's counsel has fully complied with his responsibilities and there are no arguable issues as to the remand. (*People v. Wende, supra*, 25 Cal.3d at p. 441.)

As noted, appellant filed a supplemental brief asserting two claims of error unrelated to his resentencing and beyond the scope of our remand. The matter was returned to the superior court solely for resentencing, and therefore our review is limited to resentencing issues only. (*People v. Murphy* (2001) 88 Cal.App.4th 392, 396-397 ["In an appeal following a limited remand, the scope of the issues before the court is determined by the remand order."]; *People v. Deere* (1991) 53 Cal.3d 705, 713 ["Although the judgment was reversed as to penalty, it was 'affirmed in all other respects.' [Citation.] Thus, only errors relating to the penalty phase retrial may be considered in this subsequent appeal"].) In addition, " 'except in those rare instances where there is no conceivable tactical purpose for counsel's actions,' claims of ineffective assistance of counsel generally must be raised in a petition for writ of habeas corpus based on matters outside the record on appeal." (*People v. Salcido* (2008) 44 Cal.4th 93, 172.)

**DISPOSITION**

The order is affirmed.

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STRATTON, J.

We concur:

BIGELOW, P. J.

GRIMES, J.